

KETCHIKAN GATEWAY BOROUGH

Office of the Borough Manager • 344 Front Street • Ketchikan, Alaska 99901

Roy A. Eckert
Borough Manager
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February 6, 2004

Tom Briggs
Deputy Commissioner
Department of Transportation and Public Facilities
3132 Channel Drive
Juneau, AK 99801

Re: Lease of Office Space to Alaska Marine Highway

Dear Tom:

As we have discussed attached is a proposed lease for use in connection with the State of Alaska Leasing a majority of the upper floor of the former KPC Administration building for use as Marine Highway offices.

Final approval of the lease will require Assembly action in order to become effective and binding upon the Borough. I would anticipate presenting this proposed lease to the Assembly on either February 17th, 2004 or March 1st, 2004, and would want to have the lease executed on a time schedule which would allow the required building modifications to be completed prior to a July 1st, 2004, occupancy.

Please review the lease and advise if the terms are acceptable to the State.

Sincerely,

KETCHIKAN GATEWAY BOROUGH


Roy Eckert
Borough Manager

CC:

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**STATE OF ALASKA
STANDARD LEASE FORM
LEASE NUMBER**

THIS LEASE, entered into this _____ day of _____ 2004, and
to be recorded in the **Ketchikan Recording District**, by and between:

**KETCHIKAN GATEWAY BOROUGH
344 FRONT STREET
KETCHIKAN, ALASKA 99901**

hereinafter called the Lessor, and

**STATE OF ALASKA
DEPARTMENT OF ADMINISTRATION -
550 WEST 7TH AVENUE, SUITE 601
ANCHORAGE, ALASKA 99501-3558**

hereinafter called the Lessee.

The Lessor hereby leases to the State of Alaska the following described premises:

A minimum of 6200 square feet on the upper floor of the structure located at 7559 North Tongass Highway. The legal description of the real property is USS 1056, lot 2, according to Plat 2000-41 recorded in the Ketchikan Recording District. Such premises are depicted on the map attached as exhibit A. The premises include 25 parking spaces and access to areas marked as common areas.

to have and to hold the same, with all appurtenances unto the Lessee for the term of twenty (20) year beginning on the **1st day of July, 2004** and ending on the day of **June, 2024** at and for the rental of *not more than \$ 1.60 per square foot for the initial 5 year period* ~~\$13,248.00~~ per month payable on the first day of each and every month of said term at the office of the Lessor or in advance at the option of the Lessee. Payment for any partial months occupancy shall be prorated based on a thirty (30) day month.

COVENANTS OF THE LESSEE

OFFICIAL STATE BUSINESS — NO RECORDATION CHARGE
AFTER RECORDATION, RETURN DOCUMENT TO:
STATE OF ALASKA - DEPARTMENT OF ADMINISTRATION
DIVISION OF GENERAL SERVICES
LEASING SECTION
550 WEST 7TH AVENUE, SUITE 601
ANCHORAGE, AK 99801-3558

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Lease Standard1
(Form Rev. 10/13/98)

1. The Lessee does hereby covenant and agree with the Lessor that it will:
 - a) pay said rent at the times and place and in the manner aforesaid;
 - b) use and occupy said premises in a careful and proper manner;
 - c) not use or occupy said premises for any unlawful purpose;
 - d) not assign this lease, not underlet said premises, nor any part thereof, without the written consent of the Lessor, provided however such consent shall not be unreasonably withheld;
 - e) not use or occupy said premises or permit the same to be used or occupied, for any purpose or business deemed extra-hazardous on account of fire or otherwise;
 - f) make no alterations or additions in or to said premises without the written consent of the Lessor, such consent shall not unreasonably be withheld;
 - g) leave the premises at the expiration or prior termination of this lease or any renewal or extension thereof, in as good condition as received or in which they might be put by the Lessor, excepting reasonable wear and tear and/or, loss or damage caused by fire, explosions, earthquakes, acts of God, other casualty or as provided for in section 2.b below;
 - h) permit the Lessor to enter upon said premises at all reasonable times to examine the conditions of the same;

COVENANTS OF THE LESSOR

2. And the Lessor on its part covenants and agrees with the Lessee that it will:
 - a) maintain the demised premises in good repair and tenantable condition during the continuance of this lease or any renewal or extension thereof;

- b) indemnity: the Lessor shall hold and save the State, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses for or on account of any and all suits or damages of any character whatsoever resulting from injuries or damages sustained by any person or persons or property by virtue of any act performed by the Lessor or the Lessor's agents and employees pursuant to this lease; the Lessor shall also assume all insurable risks and bear any loss of injury to property or persons occasioned by neglect or accident during the tenure of this lease, excepting only sole negligence of the Lessee.
- c) furnish heat and cooling, electricity, water, trash removal, and sewage disposal without additional cost to the Lessee;
- d) furnish heating and cooling to all the office space and similar type space uniformly within a 68 degrees Fahrenheit to 75 degrees Fahrenheit temperature range.
- e) furnish men and women's restrooms that have hot and cold running water at all lavatories and similar fixtures and which shall be equipped with mirrors and dispensers for soap, toilet tissue and paper towels. Women's restrooms shall also be equipped with sanitary napkin dispensers.
- f) maintain and keep the stairway and common or public hallway used for access to the leased premises in a clean and safe condition;
- g) maintain the premises in keeping with good fire prevention practices. The State reserves the right, at reasonable times, to enter and make fire prevention and fire protection inspections of the building and space occupied. Recommended improvements will be given every consideration by the Lessor;
- h) the Lessor agrees that facilities provided in this lease are tenantable and that they comply with all laws pertaining to tenantability and performance of this provision is insured by the Lessor agreeing to pay the cost of any building alterations which may be needed during the period of the Lessee's occupancy for purposes of correcting any violation of the law cited by a regulatory agency of government not directly a result of the State's occupancy.

If during the term of this lease, or any renewal or extension thereof, the premises or any part thereof should be rendered untenable by public authority, or by fire or the elements, or other casualty, a proportionate part of the rent according to the extent of such untenability shall be abated and suspended until the premises are again made tenantable and restored to their former condition by the Lessor; and if the premises or a substantial part thereof are thereby rendered untenable and so remain for a period of thirty (30) days, the state may, at its option, terminate the lease by written notice to the Lessor.

The State's decision shall be controlling as to whether or not the premises are fit or unfit for occupancy. This thirty day period shall not be so restrictively construed that the Lessee is bound to remain in the leased facility if the State's business cannot be safely executed. If warranted due to unsafe condition, Lessee is free to move elsewhere. If the premises are made tenantable again within this thirty day period Lessee will return to the facility for occupancy. Lessee may also choose to recover any excess costs, over the abated lease payments, occasioned by relocation due to unsafe condition.

In the event the Lessor fails to correct any violation or remedy any untenable condition in the time interval prescribed by law, the Lessee shall be free to terminate the lease, or shall have the option by hiring competent workmen, with the Lessor bearing the cost of all materials any labor. Lessor further agrees that alterations performed by the Lessee to correct OSHA violations will not be construed by the Lessor to constitute a breach of the terms of this lease.

In the event that, in the reasonable judgment of the Lessee the lawful enjoyment of the demised premises is threatened by the interruption or severance of utilities and severance provided hereunder by the Lessor, and when such interruption or severance is due to deliberate, or negligent, or tacitly negligent act of the Lessor, the Lessee shall have the right to bind such utilities and services as are threatened, in the name of the Lessee. The Lessee shall be free to deduct from the lease payments the cost of such utilities and services, together with all necessary deposits and the Lessee's actual administrative costs necessary to procure the utilities and services.

- i) maintain the building free of any mechanical, structural or electrical hazards and in a good state of general repair and maintenance. Lessor agrees that after reasonable notice in writing by the Lessee that these obligations have not been satisfactorily fulfilled, the Lessee can then obtain competent workmen to correct the deficiencies, all of which will be paid for by the Lessor. Bills for such work will be sent directly to the Lessor for payment. Should there be any delay in payment by the Lessor, the Lessee shall pay the bills and deduct the cost from the next month(s) rent payments(s), whichever is determined appropriate by the Lessee.
- j) Lessor shall renovate the space by refinishing, or replacing all damaged or worn wall, ceiling, floor covering, window covering or built-in building fixtures at least every 10 years of occupancy or at the reasonable request of the occupying State agency. All cost associated with the renovations, including moving expenses, will be the responsibility of the Lessor. If Lessor does not respond to such reasonable renovation requests by the occupying State agency, the State reserves the right to hire competent workmen to accomplish such renovation(s) at the lessor's expense.
- k) provide janitorial services.
- l) If the leased property is sold during the term of the lease, or an extension thereof, the sale will be made subject to the lease. This also applies to any sale as a result of an encumbrance on the property that existed prior to the execution of this lease.

MUTUAL COVENANTS

- 3. It is mutually agreed by and between the Lessor and Lessee that
 - a) all terms and conditions of the preceding covenants of both Lessee and Lessor are agreeable and accepted in their entirety, except as herein noted;
 - b) all fixtures and/or equipment of whatsoever nature as shall have been installed in the demised premises by the Lessee, whether permanently affixed thereto or otherwise, shall continue to be the property of the Lessee, and may be removed by it at the

expiration or termination of this lease or renewal and at its own expense repair any injury to the premises resulting from such removal;

- c) if the Lessee shall at any time be default in the payment of rent herein reserved, or in the performance of any of the covenants, terms and conditions, or provision of this lease, and the Lessee shall fail to remedy such default within sixty (60) days after written notice thereof from the Lessor, it shall be lawful for the Lessor to enter upon said premises and again have, repossess, and enjoy the same as if the lease had not been made, and thereupon this lease and everything herein contained on the part of the Lessor to be done and performed shall cease and determine without prejudice however, it shall be the right of the Lessor to recover from the Lessee all rent due up to the time of such entry. In case of any such default and entry by the Lessor, said Lessor may relet said premises for the remainder of said term for the highest rent obtainable, and may recover from the Lessee any deficiency between the amount so obtained and the rent herein reserved;
- d) if the Lessee shall pay the rent as herein provided, and shall keep, observe, and perform all of the covenants of this lease by it to be kept, performed, and observed, the Lessee shall and may, peaceably and quietly, have, hold, and enjoy the said premises for the term aforesaid;
- e) this lease and all the covenants, provisions and conditions herein contained shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto;
- f) the State shall have the option to renew this lease for one additional ten (10) year period to be exercised by giving the Lessor written notice prior to the expiration of each term.

ADJUSTMENTS: Adjustments in the lease rate may be made if requested in writing by the lessor at least thirty days prior to the effective date of the adjustment.

Such adjustments may be made annually to reflect changes in the lessor's variable costs, and defined as all operational cost other than debt service and profit and is expressed as: thirty-five percent (35%) of the base monthly lease rate.

The monthly lease rate may be adjusted effective July 1, 2009, and every five(5) years, thereafter, and will be made in accordance with the percentage change in the U.S. Department of Labor Consumer Price Index, for the Urban Wage Earners and Clerical Workers (CPI-W), All Items, Anchorage Area, issued for each January through June (1st Half) six (6) month average of each lease term.

The percentage difference between the six month average CPI-W in effect for the base year, January through June (1st Half) 2004 (_____) and the January through June (1st Half) six month average thereafter will determine the maximum allowable adjustment of the variable costs over the base monthly lease rate.

Base monthly lease rate is \$ **1.60 per square foot**

Adjustment to the monthly lease rate will be computed as follows:

$[(\text{Variable Cost Percentage} \times \text{Base Monthly Lease Rate}) \times \text{Percentage of Change In CPI}] + \text{Base Monthly Lease Rate}$ will equal (=) the adjusted monthly lease rate.

The formula is expressed as:

$[(35\% \times \text{Base Monthly Lease Rate}) \times \% \text{ change in CPI}] + \text{Base Monthly Lease Rate} = \text{Adjusted Monthly Lease Rate}.$

RETROACTIVE adjustments will not be allowed.

- g) this lease is subject to all applicable laws of the State of Alaska or local government;
- h) termination: the payments of rent by the Lessee are subject to appropriation of funds by the Legislature of the State of Alaska, and the lease may be terminated due to lack of such appropriation;
- i) all conditions and covenants of the lease shall remain in full force and effect during any extension hereof. Any holding over after the expiration date of this lease or any extension or renewal thereof, shall be construed to be a tenancy from month to month, at the same monthly rental and on the terms and conditions herein specified so far as applicable;
- j) time is of the essence of this lease.

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4. Other Provisions

The following additional provisions, modifications, exceptions, riders, layouts and or forms were, are, agreed upon prior to execution and made a part hereof:

2. Pre-occupancy Improvements: The Borough, at it's expense, will:
 - a) Repair the roof of the structure;
 - b) Survey all lighting ballasts for presence of PCB's and replace them as needed;
 - c) Resolve any outstanding fire code requirements, if any, required to service the leased area (an additional stair exit from the cafeteria area and existing stair tread heights, if required by the fire Marshall, will be addressed and provided at Borough expense if AMHS exercises its option on areas requiring these improvements.);
 - d) Clean existing carpeting, and where required due to excessive wear, replace carpeting as needed;
 - e) Construct building accessibility improvements, including any curb cuts or ramps as may be required for compliance with ADA requirements;
 - f) Modify existing restrooms to comply with ADA requirements;
 - g) Verify usability of existing electrical outlets to ensure that adequate electrical service is available in each office or designated work space. Where existing electric service is not functional it will be repaired at Borough expense;
 - h) Install new Cat 5/6 wiring; VOIP phones, 24 port Cat 5/6 patch panels and a server rack. Install a T-1 line to the communications room;
 - i) Drinking fountains will be either removed or made ADA compliant;
 - j) Security doors to separate AMHS exclusive areas will be installed; and
 - k) Existing siding on the east side of the building will be repaired and the exterior painted.
3. Interior Changes and Tenant Improvements: LESSEE will be responsible for any movement of interior walls, interior furnishings and tenant requested modifications. LESSEE will be responsible for costs of any additional telephone or electrical modifications it requires beyond those described above.

4. Telephone service will be available, but usage (i.e. monthly service charges, long distance and internet service) will be at LESSEE 's expense.
5. Lay Up Berth Improvements: The Borough will install, at it's expense, fender piles, on the functional equivalent, along the face of the dock to facilitate moorage of LESSEE's vessels.
6. Optional Additional Space: LESSEE will have an option to lease additional space within the administration building as exclusive space at the same rate structure as the initial lease. Option areas are in three units: a) the areas currently leased by Ty-Matt Inc., b) the cafeteria, kitchen and smoking areas on the upper floor, and c) areas on the lower floor of the structure. With respect to the option on the space currently leased by Ty-Matt, Inc., that option must be exercised with sufficient advance notice to comply with the Ty-Matt lease terms. (The current Ty-Matt lease provides for Termination upon 6 months notice provided that the vacation of the space by Ty-Matt falls between December 1 and March 31 of a given year).
7. The option to LESSEE on additional space in the administration building may be exercised by other State agencies in the event that the State DOT desires to consolidate it's offices in the Ketchikan area into single location, or in the event that the State desires to consolidate other State offices into this location.
8. LESSEE's Vessels will have priority for moorage along the dock on lease terms comparable to the existing moorage agreement, subject to cost adjustment for CPI.
9. Incentive credits: The LESSOR will provide a credit to reimburse for actual moving costs incurred up to a maximum of \$420,000. The moving costs shall be reimbursed as a credit over time at the rate of \$1.10 per square foot for the first 2 years of the lease, and a credit of \$0.55 per square foot for the third and subsequent years until the reimbursement is met.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year written below.

Lessor: Ketchikan Gateway Borough

Lessee: STATE OF ALASKA

By: _____

By: _____

Title: _____

Contracting Officer

Date: _____

Date: _____

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(Form Rev. 10/13/98)

LESSOR:

KETCHIKAN GATEWAY BOROUGH

Date Signed: _____

By: _____

Roy Eckert
Borough Manager

Attest:

Harriett Edwards
Borough Clerk

APPROVED AS TO FORM:

Scott Brandt-Erichsen
Borough Attorney

ACKNOWLEDGMENT OF LESSOR: Ketchikan Gateway Borough
STATE OF ALASKA
CITY OF

This is to certify that on this _____ day of _____ 2004 before me a Notary Public in and for the State of Alaska duly commissioned and sworn personally appeared _____ to me known and known by me to be the person(s) described in and who executed the instruments set forth above and severally stated to me under oath that (he, she, it) is _____ and that (he, she, it) has been authorized by _____ to execute the foregoing lease amendment for and on behalf of the said company, corporation, individual, or other entity and they executed same freely and voluntarily as a free act and deed of Same.

WITNESS my hand and official seal the day and year this certificate first above written.

Notary Public for Alaska

My Commission Expires: _____

Residing at: _____

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ACKNOWLEDGMENT BY LESSEE: STATE OF ALASKA
STATE OF ALASKA
CITY OF ANCHORAGE

This is to certify that on this _____ day of _____ 2004, before me a Notary Public in and for the State of Alaska duly commissioned and sworn, personally appeared _____, to me known and known by me to be the person described in the executed instruments set forth above as an agent of the Division of General Services of the State of Alaska and that this person has been authorized by the State of Alaska to execute the foregoing lease amendment on behalf of said State of Alaska and that this person executed the same freely and voluntarily as the free act and deed of the State of Alaska.

WITNESS my hand and official seal the day and year this certificate first above written.

Demetria Veasy
Notary Public for Alaska
My Commission Expires: October 16, 2006
Residing at: Anchorage, Alaska

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